

**ASSEMBLY BILL**

**No. 1953**

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**Introduced by Assembly Member Weber**

February 12, 2016

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An act to amend Section 8332 of the Government Code, to amend Sections 148.6, 832.18, 13010.5, 13012, and 13012.5 of the Penal Code, and to amend Section 41603 of the Vehicle Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 1953, as introduced, Weber. Peace officers: civilian complaints.

Existing law requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and to make a written description of the procedure available to the public. Existing law also refers to these complaints as citizens' complaints. Existing law sets forth specified policies and procedures relating to citizens' complaints. Among other things, existing law makes it a misdemeanor to file an allegation of misconduct against a peace officer knowing the allegation to be false. Existing law requires a law enforcement agency accepting an allegation of misconduct against a peace officer to require the complainant to read and sign a specified advisory that describes, generally, the law and procedure governing citizens' complaints. Existing law also requires the Department of Justice to prepare and present to the Governor, on or before July 1, an annual report containing the criminal statistics of the preceding calendar year, including, among other statistics, the total number of citizen complaints alleging racial or identity profiling, as specified.

This bill would delete references to citizens' complaints and instead refer to civilians' complaints.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8332 of the Government Code is amended  
2 to read:

3 8332. It is the intent of the Legislature that this chapter ~~shall~~  
4 *does* not apply to the Reporting of Improper Governmental  
5 Activities Act (Article 3 (commencing with Section 8547) of  
6 Chapter 6.5) or the procedures established to investigate ~~citizens'~~  
7 *civilians'* complaints against peace officers as required by Section  
8 832.5 of the Penal Code.

9 SEC. 2. Section 148.6 of the Penal Code is amended to read:

10 148.6. (a) (1) Every person who files any allegation of  
11 misconduct against any peace officer, as defined in Chapter 4.5  
12 (commencing with Section 830) of Title 3 of Part 2, knowing the  
13 allegation to be false, is guilty of a misdemeanor.

14 (2) ~~Any~~ A law enforcement agency accepting an allegation of  
15 misconduct against a peace officer shall require the complainant  
16 to read and sign the following advisory, all in boldface type:

17 **YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST**  
18 **A POLICE OFFICER FOR ANY IMPROPER POLICE**  
19 **CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY**  
20 **TO HAVE A PROCEDURE TO INVESTIGATE ~~CITIZENS'~~**  
21 ***CIVILIANS'* COMPLAINTS. YOU HAVE A RIGHT TO A**  
22 **WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS**  
23 **AGENCY MAY FIND AFTER INVESTIGATION THAT THERE**  
24 **IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON**  
25 **YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU**  
26 **HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE**  
27 **IT INVESTIGATED IF YOU BELIEVE AN OFFICER**  
28 **BEHAVED IMPROPERLY. ~~CITIZEN~~ *CIVILIAN* COMPLAINTS**  
29 **AND ANY REPORTS OR FINDINGS RELATING TO**  
30 **COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR**  
31 **AT LEAST FIVE YEARS.**

32 **IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT**  
33 **YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT**

1 AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU  
2 CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

3  
4 I have read and understood the above statement.

5  
6  
7 \_\_\_\_\_  
8 Complainant

9 (3) The advisory shall be available in multiple languages.

10 (b) Every person who files a civil claim against a peace officer  
11 or a lien against his or her property, knowing the claim or lien to  
12 be false and with the intent to harass or dissuade the officer from  
13 carrying out his or her official duties, is guilty of a misdemeanor.  
14 This section applies only to claims pertaining to actions that arise  
15 in the course and scope of the peace officer's duties.

16 SEC. 3. Section 832.18 of the Penal Code is amended to read:

17 832.18. (a) It is the intent of the Legislature to establish  
18 policies and procedures to address issues related to the  
19 downloading and storage data recorded by a body-worn camera  
20 worn by a peace officer. These policies and procedures shall be  
21 based on best practices.

22 (b) When establishing policies and procedures for the  
23 implementation and operation of a body-worn camera system, law  
24 enforcement agencies, departments, or entities shall consider the  
25 following best practices regarding the downloading and storage  
26 of body-worn camera data:

27 (1) Designate the person responsible for downloading the  
28 recorded data from the body-worn camera. If the storage system  
29 does not have automatic downloading capability, the officer's  
30 supervisor should take immediate physical custody of the camera  
31 and should be responsible for downloading the data in the case of  
32 an incident involving the use of force by an officer, an  
33 officer-involved shooting, or other serious incident.

34 (2) Establish when data should be downloaded to ensure the  
35 data is entered into the system in a timely manner, the cameras are  
36 properly maintained and ready for the next use, and for purposes  
37 of tagging and categorizing the data.

38 (3) Establish specific measures to prevent data tampering,  
39 deleting, and copying, including prohibiting the unauthorized use,  
40 duplication, or distribution of body-worn camera data.

1 (4) Categorize and tag body-worn camera video at the time the  
2 data is downloaded and classified according to the type of event  
3 or incident captured in the data.

4 (5) Specifically state the length of time that recorded data is to  
5 be stored.

6 (A) Unless subparagraph (B) or (C) applies, nonevidentiary data  
7 including video and audio recorded by a body-worn camera should  
8 be retained for a minimum of 60 days, after which it may be erased,  
9 destroyed, or recycled. An agency may keep data for more than  
10 60 days to have it available in case of a ~~citizen~~ *civilian* complaint  
11 and to preserve transparency.

12 (B) Evidentiary data including video and audio recorded by a  
13 body-worn camera under this section should be retained for a  
14 minimum of two years under any of the following circumstances:

15 (i) The recording is of an incident involving the use of force by  
16 a peace officer or an officer-involved shooting.

17 (ii) The recording is of an incident that leads to the detention  
18 or arrest of an individual.

19 (iii) The recording is relevant to a formal or informal complaint  
20 against a law enforcement officer or a law enforcement agency.

21 (C) If evidence that may be relevant to a criminal prosecution  
22 is obtained from a recording made by a body-worn camera under  
23 this section, the law enforcement agency should retain the recording  
24 for any time in addition to that specified in paragraphs (A) and  
25 (B), and in the same manner as is required by law for other  
26 evidence that may be relevant to a criminal prosecution.

27 (D) In determining a retention schedule, the agency should work  
28 with its legal counsel to determine a retention schedule to ensure  
29 that storage policies and practices are in compliance with all  
30 relevant laws and adequately preserve evidentiary chains of  
31 custody.

32 (E) Records or logs of access and deletion of data from  
33 body-worn cameras should be retained permanently.

34 (6) State where the body-worn camera data will be stored,  
35 including, for example, an in-house server which is managed  
36 internally, or an online cloud database which is managed by a  
37 third-party vendor.

38 (7) If using a third-party vendor to manage the data storage  
39 system, the following factors should be considered to protect the  
40 security and integrity of the data:

1 (A) Using an experienced and reputable third-party vendor.

2 (B) Entering into contracts that govern the vendor relationship  
3 and protect the agency's data.

4 (C) Using a system that has a built-in audit trail to prevent data  
5 tampering and unauthorized access.

6 (D) Using a system that has a reliable method for automatically  
7 backing up data for storage.

8 (E) Consulting with internal legal counsel to ensure the method  
9 of data storage meets legal requirements for chain-of-custody  
10 concerns.

11 (F) Using a system that includes technical assistance capabilities.

12 (8) Require that all recorded data from body-worn cameras are  
13 property of their respective law enforcement agency and shall not  
14 be accessed or released for any unauthorized purpose, explicitly  
15 prohibit agency personnel from accessing recorded data for  
16 personal use and from uploading recorded data onto public and  
17 social media Internet Web sites, and include sanctions for violations  
18 of this prohibition.

19 (c) (1) For purposes of this section, "evidentiary data" refers  
20 to data of an incident or encounter that could prove useful for  
21 investigative purposes, including, but not limited to, a crime, an  
22 arrest or citation, a search, a use of force incident, or a  
23 confrontational encounter with a member of the public. The  
24 retention period for evidentiary data are subject to state evidentiary  
25 laws.

26 (2) For purposes of this section, "nonevidentiary data" refers  
27 to data that does not necessarily have value to aid in an  
28 investigation or prosecution, such as data of an incident or  
29 encounter that does not lead to an arrest or citation, or data of  
30 general activities the officer might perform while on duty.

31 (d) Nothing in this section shall be interpreted to limit the  
32 public's right to access recorded data under the California Public  
33 Records Act (Chapter 3.5 (commencing with Section 6250) of  
34 Division 7 of Title 1 of the Government Code).

35 SEC. 4. Section 13010.5 of the Penal Code is amended to read:

36 13010.5. The department shall collect data pertaining to the  
37 juvenile justice system for criminal history and statistical purposes.  
38 This information shall serve to assist the department in complying  
39 with the reporting requirement of ~~subdivisions (e) and (d)~~  
40 *paragraphs (3) and (4) of subdivision (a)* of Section 13012,

1 measuring the extent of juvenile delinquency, determining the  
2 need for and effectiveness of relevant legislation, and identifying  
3 long-term trends in juvenile delinquency. Any data collected  
4 pursuant to this section may include criminal history information  
5 which may be used by the department to comply with the  
6 requirements of Section 602.5 of the Welfare and Institutions Code.

7 SEC. 5. Section 13012 of the Penal Code is amended to read:

8 13012. (a) The annual report of the department provided for  
9 in Section 13010 shall contain statistics showing all of the  
10 following:

11 (1) The amount and the types of offenses known to the public  
12 authorities.

13 (2) The personal and social characteristics of criminals and  
14 delinquents.

15 (3) The administrative actions taken by law enforcement,  
16 judicial, penal, and correctional agencies or institutions, including  
17 those in the juvenile justice system, in dealing with criminals or  
18 delinquents.

19 (4) The administrative actions taken by law enforcement,  
20 prosecutorial, judicial, penal, and correctional agencies, including  
21 those in the juvenile justice system, in dealing with minors who  
22 are the subject of a petition or hearing in the juvenile court to  
23 transfer their case to the jurisdiction of an adult criminal court or  
24 whose cases are directly filed or otherwise initiated in an adult  
25 criminal court.

26 (5) (A) The total number of each of the following:

27 (i) ~~Citizen~~-*Civilian* complaints received by law enforcement  
28 agencies under Section 832.5.

29 (ii) ~~Citizen~~-*Civilian* complaints alleging criminal conduct of  
30 either a felony or misdemeanor.

31 (iii) ~~Citizen~~-*Civilian* complaints alleging racial or identity  
32 profiling, as defined in subdivision (e) of Section 13519.4. These  
33 statistics shall be disaggregated by the specific type of racial or  
34 identity profiling alleged, such as based on a consideration of race,  
35 color, ethnicity, national origin, religion, gender identity or  
36 expression, sexual orientation, or mental or physical disability.

37 (B) The statistics reported under this paragraph shall provide,  
38 for each category of complaint identified under subparagraph (A),  
39 the number of complaints within each of the following disposition  
40 categories:

1 (i) “Sustained,” which means that the investigation disclosed  
2 sufficient evidence to prove the truth of allegation in the complaint  
3 by preponderance of evidence.

4 (ii) “Exonerated,” which means that the investigation clearly  
5 established that the actions of the personnel that formed the basis  
6 of the complaint are not a violation of law or agency policy.

7 (iii) “Not sustained,” which means that the investigation failed  
8 to disclose sufficient evidence to clearly prove or disprove the  
9 allegation in the complaint.

10 (iv) “Unfounded,” which means that the investigation clearly  
11 established that the allegation is not true.

12 (C) The reports under subparagraphs (A) and (B) shall be made  
13 available to the public and disaggregated for each individual law  
14 enforcement agency.

15 (b) It shall be the duty of the department to give adequate  
16 interpretation of the statistics and so to present the information  
17 that it may be of value in guiding the policies of the Legislature  
18 and of those in charge of the apprehension, prosecution, and  
19 treatment of the criminals and delinquents, or concerned with the  
20 prevention of crime and delinquency. The report shall also include  
21 statistics which are comparable with national uniform criminal  
22 statistics published by federal bureaus or departments heretofore  
23 mentioned.

24 (c) Each year, on an annual basis, the Racial and Identity  
25 Profiling Board (RIPA), established pursuant to paragraph (1) of  
26 subdivision (j) of Section 13519.4, shall analyze the statistics  
27 reported pursuant to subparagraphs (A) and (B) of paragraph (5)  
28 of subdivision (a) of this section. RIPA’s analysis of the complaints  
29 shall be incorporated into its annual report as required by paragraph  
30 (3) of subdivision (j) of Section 13519.4. The reports shall not  
31 disclose the identity of peace officers.

32 SEC. 6. Section 13012.5 of the Penal Code is amended to read:

33 13012.5. (a) The annual report published by the department  
34 under Section 13010 shall, in regard to the contents required by  
35 *paragraph (4) of subdivision (d)* of Section 13012, include the  
36 following statewide information:

37 (1) The annual number of fitness hearings held in the juvenile  
38 courts under Section 707 of the Welfare and Institutions Code,  
39 and the outcomes of those hearings including orders to remand to  
40 adult criminal court, cross-referenced with information about the

1 age, gender, ethnicity, and offense of the minors whose cases are  
2 the subject of those fitness hearings.

3 (2) The annual number of minors whose cases are filed directly  
4 in adult criminal court under Sections 602.5 and 707 of the Welfare  
5 and Institutions Code, cross-referenced with information about the  
6 age, gender, ethnicity, and offense of the minors whose cases are  
7 filed directly to the adult criminal court.

8 (3) The outcomes of cases involving minors who are prosecuted  
9 in adult criminal courts, regardless of how adult court jurisdiction  
10 was initiated, including whether the minor was acquitted or  
11 convicted, or whether the case was dismissed and returned to  
12 juvenile court, including sentencing outcomes, cross-referenced  
13 with the age, gender, ethnicity, and offense of the minors subject  
14 to these court actions.

15 (b) The department's annual report published under Section  
16 13010 shall include the information described in *paragraph (4) of*  
17 *subdivision (d) (a)* of Section 13012, as further delineated by this  
18 section, beginning with the report due on July 1, 2003, for the  
19 preceding calendar year.

20 SEC. 7. Section 41603 of the Vehicle Code is amended to read:

21 41603. No state or local agency employing peace officers or  
22 parking enforcement employees engaged in the enforcement of  
23 this code shall use the number of arrests or citations issued by a  
24 peace officer or parking enforcement employees as the sole  
25 criterion for promotion, demotion, dismissal, or the earning of any  
26 benefit provided by the agency. Those arrests or citations, and  
27 their ultimate dispositions, may only be considered in evaluating  
28 the overall performance of a peace officer or parking enforcement  
29 employees. An evaluation may include, but shall not be limited  
30 to, criteria such as attendance, punctuality, work safety, complaints  
31 by ~~citizens~~, *civilians*, commendations, demeanor, formal training,  
32 and professional judgment.